

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

V.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,

Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. § 9607(a). In this action, the United States seeks to recover response costs it has incurred in conducting a removal action in connection with the Morses Pond Culvert Superfund Removal Site (the "Site"), in the Town of Wellesley, Massachusetts.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C.

§ 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this judicial district because the release or threatened release of hazardous substances that gives rise to this claim occurred in this district and because the Site is located in this district.

DEFENDANT

4. Defendant Massachusetts Bay Transportation Authority ("MBTA") is an independent authority and a political subdivision of the Commonwealth of Massachusetts.

5. MBTA is the current owner of a portion of the Site from which there was a release or a threatened release of hazardous substances.

THE SITE

6. The Site is located in Wellesley, Norfolk County, Massachusetts, at 42° 17' 41" north latitude and 71° 19' 08" west longitude. The Site includes a residential property at One Beacon Street, the cove at the southern end of Morses Pond, the culvert which drains from the southern end of Morses Pond, and portions of property owned by MBTA and the Town of Wellesley adjacent to the cove at the south end of Morses Pond. The Site is abutted to the north by the remainder of Morses Pond, to the south by railroad tracks and Paintshop Pond, to the east by a recreational town beach, and to the west by Bacon Street and residential properties.

7. MBTA acquired title to a portion of the Site, on or about January 17, 1973, from the Penn Central Transportation Company, through its bankruptcy proceedings.

8. In 1994 and 1998 the Massachusetts Department of Environmental Protection ("MADEP") collected and analyzed samples of soil and water from the Site. Testing revealed high levels of

chromium in the soil and water samples. Soil samples also had elevated levels of lead.

9. MADEP sent MBTA a Notice of Responsibility, by letter dated September 30, 1994, informing MBTA of its liability and requesting that MBTA assess and/or remediate the Site.

10. MADEP sent MBTA a second Notice of Responsibility, by letter dated June 18, 1996.

11. In, or about, 1996, MADEP took response actions at the Site, which included the installation of a perimeter fence and "No Trespassing" signs.

12. In, or about, 1998, MADEP undertook additional response actions at the Site, including the laying of geotextile fabric and the installation of monitoring wells.

13. In 1999, MADEP requested that EPA investigate the Site.

14. In 1999, EPA conducted investigations at the Site, taking both soil and sediment samples for analysis. These samples revealed elevated levels of chromium and lead in the soil and sediment at the Site.

15. Chromium and lead are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. By letter dated December 7, 1999, EPA notified MBTA that it was potentially liable for the removal or costs for the removal of hazardous substances at the Site.

17. Pursuant to an EPA Action Memorandum signed by EPA on September 25, 2000, and a Supplemental Action Memorandum signed by EPA on August 9, 2001, EPA conducted a CERCLA removal action at the Site in 2001 - 2002, which included soil testing,

installation of a system of 24 wells and a coffer dam to drain water from the cove in Morses Pond and the culvert, removal of contaminated sediment from the cove and culvert, construction of sheet piling to retain the embankment during the removal of contaminated soils from the embankment and surrounding area, in-situ treatment of contaminated soil, installation of a cap in the embankment excavation area, backfilling of clean fill material, and planting of trees, seeding, and replacement of trees that did not survive.

GENERAL ALLEGATIONS

18. The Site is a "facility" within the meaning of Section 101(9), 42 U.S.C. § 9601(9).

19. There were "releases" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. § 9601(14) and (22), and 42 U.S.C. § 9607(a), into the environment and at the Site.

20. There was a "threat of release" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. § 9601(14) and (22), and 42 U.S.C. § 9607(a), into the environment and at the Site.

21. As a result of the release or threatened release of hazardous substances at the Site, the United States has incurred "response costs" as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. § 9601(25), and 9607(a), for actions taken in response to the release or threat of release at the Site.

22. As a result of such response actions, the United States has incurred response costs calculated through May 24, 2004, in the amount of at least \$3,953,614.36, plus \$87,127.02 in

interest, calculated from October 21, 2002 through May 20, 2004. These costs have not been reimbursed to the United States.

23. The response costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan, as set forth in 40 C.F.R. Part 300.

CLAIM FOR RELIEF

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner and operator of a vessel or a facility,

(4) , . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan;

28. MBTA is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the current owner/operator of a portion of the Site.

29. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendant is jointly and severally liable to the United States for all costs incurred and to be incurred by the United States in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully prays that this Court:

1. Enter judgment against MBTA, jointly and severally, and in favor of the United States for response costs incurred by the United States in connection with the Site, in the amount of at least \$3,953,614.36 calculated through May 24, 2004, plus interest, together with appropriate costs, legal fees and expenses associated with this action; and

2. Grant such other relief as the Court deems appropriate.

Respectfully submitted,

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